IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY THIRD DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION NO : 12888 of 2004

Between:

Kavali Reddy Srinivasa Reddy S/o Venku Reddy, Plot No.6 and 7, Block-B, Ramalingapuram , Nellore, Nellore District

..... PETITIONER

AND

1 The Municipal Commissioner Nellore Municipality, Nellore
2 The Town Planning Officer Nellore Municipality, Nellore

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of mandamus or any other appropriate writ, order or direction declaring the proceedings in UC.No.1/2004, dt. 5/07/2004 issued by the2nd Respondent under Section 228(1) and 228(2) of AP. Municipalities Act, 1965, as being arbitrary, illegal, unconstitutional and violative of Principles of Natural Justice and Consequently set aside the same.

Counsel for the Petitioner: MR.P.VENKAT RAO

Counsel for the Respondent Nos.1&2: MR.Dammalapati SRINIVAS

The Court at the stage of admission made the following :

ORDER:

Heard the learned counsel for the petitioner and also learned counsel for the respondents-Municipality and at their instance, the Writ Petition is disposed of at the admission stage itself.

It is the case of the petitioner that he obtained permission in BA.No.1181/03/G1, dated 20-11-2003 for construction of the residential apartment. The 2nd respondent has issued impugned provisional order dated 5-07-2004 under Section 228(1) of A.P. Municipalities Act, informing the petitioner that he has deviated the approval plan and called for the removal of the construction which was constructed contrary to the rules, failing to do why provisional order should not be confirmed under Section 228(2) of the Act.

Learned counsel for the petitioner rightly pointed that in the notice issued under Section 228(1) of the Act, no deviation has been mentioned. As per Section 228(1), "it is open for the respondents while making provisional order requiring the owner or the builder to demolish the work done or so much of it as in the opinion of the said Officer, in his opinion, be necessary to bring the work into conformity with the Act, bye-laws, rules direction or requisition as aforesaid or as in the plans, and particulars on which such permission or order is complied with". As ordained above unless the particulars of deviation contrary to the sanction of the plan is furnished in

the notice, the respondents can not call upon the removal of construction made except informing the petitioner about the deviation of plan.

Admittedly, in the impugned notice dated 5-7-2004 such details are lacking. In view of the same, the impugned notice is set aside. The respondents are at liberty to issue fresh notice and can point out the deviation so made and can proceed in accordance with the law.

The Writ Petition is accordingly disposed of. No costs.

23rd JULY, 2004

BSS

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Municipal Commissioner, Nellore Municipality, Nellore.
2 The Town Planning Officer, Nellore Municipality, Nellore.

3.2CD copies

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